



“Data reveals striking patterns in the types of cases that seem to settle almost invariably as against those where a healthy number fight through to conclusion.”

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## What are the key trends you've seen in commercial disputes in recent years?

We've seen a lot of stability in case volume and then a dramatic story when Covid struck. Initially, volumes fell off a cliff for newly issued claims and then recovered sharply. At the moment, they are at a higher level than before – and quite a few are related to Covid one way or another. We're seeing more contractual disputes, more rent disputes with big landlords and tenants. Overall, Covid taken together with the wider economic climate is having a marked effect.

## What patterns were you seeing in case data pre-Covid?

It's been reasonably stable in High Court litigation. You see a lot of banking and finance disputes. Over the last three-to-five years, we have seen probably the last examples of disputes related to the 2008 financial crisis. There's also always a lot of shipping work, always a lot of insurance work. Those are probably the three dominant areas. There's also a steady volume of construction work. If you take those areas, you have a very large proportion of High Court litigation. I don't think there's been a sharp change in any of those, setting Covid aside, for the last three-to-five years.

## What is the outlook for shipping, insurance and construction disputes?

If I was to prognosticate, taking insurance first, it's clear from the data there is a steady volume of cases coming through that are Covid-related. I would be surprised if there wasn't a reasonable amount of litigation, notwithstanding that you would think the Supreme Court having weighed in [the UK business-interruption test case ruling] ought to have cut down the possible scope of disputes. Insurance is almost certain to grow sharply. In an area like construction, it shouldn't be as directly Covid-related, but what you are likely to see is the ordinary effect on litigation that occurs with an economic shock, which is a net increase.

I am interested to see whether there is any litigation arising out of the Covid-related government programmes. We've had an unprecedented level of government involvement in various schemes – for example, not letting tenants be kicked out or some of the loan schemes. There may be some interesting litigation arising from some of those interventions.

## Crunching the data from the English courts, are there major surprises or received wisdoms challenged?

You see some striking patterns in the types of cases that seem to settle almost invariably, as against those where a healthy number fight through to conclusion. To take one example, negligence claims settle at very high rates.

“Lawyers will increasingly have to place their advice in a data context. In no other high-stakes business situation would you get away with saying: ‘This feels like a 60%/40% case.’”

**Is that because they are hard to win? They have low success rates.**

That’s the interesting thing – which of those numbers is influencing the other? You could say, “It’s because they are hard to win that people are settling them.” In a way, it’s probably more likely the other way around: people are keen as defendants to settle if they think there is any real risk they are going to lose.

**Because of the reputational impact?**

Exactly. I suspect there may be an element of selection bias creeping in there. As for another area where striking patterns emerge, you also see interesting stuff when you map relationships between different companies and their lawyers. You see not just who is using which lawyers, but which kinds of cases they are using them on.

**Looking at the data, what would you highlight as useful takeaways for general counsel?**

If I was going to pick just a couple of points, the first would be how rapidly many claims settle and the value of trying to weigh up the likelihood a claim will settle very quickly. The biggest risk of money left on the table is that people don’t bring claims because they don’t want that long court battle. But the data shows that, more often than they think, they would have a good chance of avoiding that if everybody can be sensible and discuss a settlement.

The second thing we see in the judgment data, when we model different kinds of cases, is there are some very striking distinctions in terms of different types of cases and how often those cases end up succeeding. One thing we get again and again is that while legal advice often hugs the middle – people are loath to say anything has less than a 40% chance of success or more than 60% – the data indicates that, in the round, there are categories of case which seem to very strongly tilt towards one end of the spectrum or the other on chances of success. I would say to a GC in that situation: “Look carefully at what the data shows for this type of case.” Maybe it’s a case that really depends on the facts, but it also may be that it’s in a category where the data strongly indicates there is a particular expectation one should have.

**What are the prospects for London as a forum for resolving mobile disputes?**

I suspect we won’t know in the next five-to-10 years. There is often a significant time lag between the contracts that agreed a dispute should be heard in London and the start of the actual dispute. If you took the next five years, it would be surprising if a high proportion of claims relate to contracts agreed post-Brexit or even shortly pre-Brexit. My central expectation for the long-term would be very little change, outside some specialised areas where EU law is more important and where European institutions take steps to make sure EU matters are litigated in the EU.

**The data shows little difference in success rates in cases with a QC versus non-QC teams. What do you read into that?**

It is difficult to know how much the difference is based on the quality of the barristers, because there are so many variables in any case. I suspect many cases where the non-QC team is successful are pretty senior junior barristers, so I don’t think we are talking about a star QC against a baby junior barrister – you’re talking about people who are more evenly matched in experience.

## But does it suggest that senior juniors are better value?

I suppose to make those judgements you would have to know how big the gap was in cost. What it certainly shows is there are a lot of very capable senior juniors doing excellent work, who are not intimidated or outclassed by QCs. And if there's enough money at stake and the data shows I am just nudging up my chances a bit by using a QC, one can immediately think of many cases where you'd absolutely do that.

## Are you seeing other interesting litigation tools that can give clients more of a quantifiable basis to make decisions?

In the US, you have products that focus broadly on litigation analytics, others that focus on analysing different judges and others still that focus on analysing different lawyers and their experience. Going forward, I think you will see a proliferation of lawyers having to place their advice in a data context. It will become pretty inconceivable that a lawyer will be able to get away with saying: "It feels like this is a 60%/40% case." You wouldn't get away with that in any other high-stakes business situation.

## How much scope do you see for radical change in the litigation environment?

It will be incremental, but significant enough that when we look back in 10 years, we will see something that looks substantially different. The expectations that exist for litigators and general counsel will gradually shift. We could talk about data as one part of that, we could talk about virtual hearings, machine learning applied to disclosure – there are all sorts of conversations people are going to have about value and how bills are calculated. All these changes will feed off each other and incrementally move everything along over the next decade. The net result will be one where the litigation world feels markedly different and it's hard to remember what it was like before.

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